

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|--------------------|---|---------------------|
| JAMES A. COUTTS, |) | CASE NO. 4:13CV3144 |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | MEMORANDUM |
| |) | AND ORDER |
| STATE OF NEBRASKA, |) | |
| |) | |
| Respondent. |) | |

Petitioner has filed a Petition for Writ of Habeas Corpus pursuant [28 U.S.C. § 2254](#).

(Filing No. [1](#).) Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts states that “if the petitioner is currently in custody under a state-court judgment, the petition must name as respondent the state officer who has custody.” In habeas corpus challenges to present physical confinement, the default rule is that the proper respondent is the warden of the facility where the prisoner is being held. [*Rumsfeld v. Padilla, 542 U.S. 426, 434 \(2005\)*](#).

Petitioner has named the State of Nebraska as Respondent in this matter. The State of Nebraska is not the proper respondent in this case. In order for this matter to proceed, Petitioner must file an amended petition for writ of habeas corpus naming the current warden of Petitioner’s place of confinement as the respondent. In the alternative, Plaintiff may file a motion to substitute party in which he asks the court to substitute the current warden of his present place of confinement as the respondent.

IT IS THEREFORE ORDERED that:

1. On the court’s own motion, Plaintiff shall have 30 days from the date of this Memorandum and Order to file an amended petition for writ of habeas corpus naming the current warden of Petitioner’s place of confinement as the respondent. In the alternative, Plaintiff may file a motion to substitute party in which he asks the court to substitute the current warden at his present

place of confinement as the respondent. Failure to do so may result in dismissal of this matter without further notice; and

2. The clerk's office is directed to set the following pro se case management deadline: December 9, 2013: Deadline for the petitioner to name proper respondent.

DATED this 7th day of November, 2013.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

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